

Several years later ...

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Developer Richard M. Osborne Jr. says that probably a \$1 billion has been lost in jobs, taxes and land sales because of the legal wrangling over the Riverside Commons development on the Willoughby/Mentor border.

# Willoughby project in limbo

■ Major development remains mired in wetlands issues

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Frustration, anyone?

Just talk to the parties involved in the Riverside Commons development dispute in Willoughby.

The partially wooded 300-acre parcel just southeast of the Lost Nation Road-Route 2 interchange has sat dormant since the U.S. Army Corps of Engineers halted work several years ago, claiming violation of the Clean Water Act.

Litigation filed in 2006 in U.S. District Court by

property owner Midway Industrial Campus Co. versus the Army Corps and U.S. EPA resulted in a voluntary dismissal by both sides in 2009, after a settlement couldn't be reached.

The strategically situated land — rezoned to allow commercial as well as industrial use — is seen by some as a key component to reviving the economy in Willoughby, Lake County and

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Richard M. Osborne Jr.'s take on land at stake.

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beyond.

As such, local, state and federal leaders have gone to bat for the project, but to no avail.

"I've been actively working with the city of Willoughby and the developer, and I shared my concerns with the EPA administrator when we met in my Washington office earlier this year," said U.S. Rep. Steven C. LaTourette, R-Bainbridge Township. "This site has infrastructure in place ... but the project has been in limbo. ... The parties are talking and I hope we can come to a resolution on this area — effectively the last undeveloped area south of the freeway between Cleveland and Mentor — can be developed, create jobs and help Willoughby, which has devoted considerable time and

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# Limbo

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expense on infrastructure improvements. Moving forward on this project would really help the local economy."

## The history

In 1994, Willoughby's first master plan identified this property as one of only two opportunities for retail and commercial development. The other — the "Meadowlands" — since has been developed as Willoughby Commons.

The Riverside Commons proposal dates back to 1999, when the first wetland delineation was done.

Experts representing Midway Industrial Campus Co. determined about 25 acres were wetlands.

A revised delineation was requested by the Corps after a 2003 inspection led Corps officials to determine the amount of wetlands to be "much greater" than the one submitted by developers. Court documents indicate that the new delineation wasn't received.

In 2004, the city of Willoughby invested more than \$5.4 million in the construction of roads, storm and sanitary sewer lines, water lines and note issuance costs. These costs were incurred at the request of the developer and will be assessed to the property at the time of the issuance of the bonds later this year, Willoughby Finance Director Ray Rogowski said.

A subsequent inspection by the Corps, assisted by the Ohio EPA, led to a cease-and-desist order. Environmental officials said more than 62 acres of wetlands and stream were dredged and filled without a Clean Water Act permit.

The CWA establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The National Pollutant Discharge Elimination System permit program controls water pollution by regulating point sources that discharge pollutants into waters, such as pipes or man-made ditches.

of Congress.

"There's no doubt in my client's mind this is a government taking of his property," Resnick said, adding that he unsuccessfully has appealed for an independent federal mediator to be brought in.

"It's an Osborne property and the Osbornes and the Corps don't get along."

Other property owners are Steve Calabrese and the Naylor family of Steubenville and Columbus, Resnick said.

Corps and EPA officials referred calls to the U.S. Justice Department, which represents federal agencies in court litigation and enforcement matters.

"As a matter of policy, I cannot comment on or confirm any potential enforcement measures or settlement negotiations that may be going on," department Spokesman Wyn Hornbuckle said.

## Hanging in the balance

Osborne's camp maintains that thousands of jobs and \$1 billion worth of development has been lost over the years, along with a \$15 million retail development contract with Developers Diversified of Beachwood.

"We had easily a dozen industrial prospects we haven't been able to bring in," said Richard M. Osborne Jr., son of the property owner. "I showed the property last week (to an industrial company). People want to go in here."

Willoughby Community Development Director Janice Lipscomb said Riverside Commons represents Willoughby's "best chance to increase revenue without putting a further burden on our residents."

"The developers of the property estimate that Riverside Commons could have a \$36 million per year economic impact for our community, increasing total tax collections by 5 percent to 10 percent, as well as creating 1,500 new jobs. This money is vital to maintain basic city services and to generate much-needed tax dollars for the Willoughby-Eastlake School District without increasing the number of students."

Midway representatives called sections of the CWA unconstitutional and litigation ensued.

Little has happened since the voluntary dismissal by both sides, said Melvyn Resnick, attorney for Richard M. Osborne Sr., who owns a third of Midway.

"It's like in an abyss," he said. "It's very frustrating. It's either the government's way or the highway. We cannot work through this dispute, unfortunately. ...

"I challenge anyone to walk that land and tell me it's federally jurisdictional wetlands there. ... Their position is rip out the roads and don't develop."

Resnick contends that the CWA is being misapplied not only in this case, but also in many across the nation. He takes issue with the Act being interpreted via 1987 wetlands delineation rules and regulations that were adopted by the Corps and EPA without a vote

During the last five years, Willoughby has been unable to respond to businesses looking for increased land or space, she said.

"With our economy finally turning around, we expect a greater difficulty in retaining our existing businesses and attracting new businesses without any available product to offer," she said.

"I think that the unavailability of Riverside Commons has a great deal to do with companies relocating outside of Willoughby," she added.

Mayor David E. Anderson said city representatives have traveled to three different states to participate in talks between the developers and environmental officials.

"While this has taken much longer than anyone could have foreseen, all parties involved have kept an active dialogue going and I remain hopeful that an agreement between the developers and the U.S. government can be reached," he said.